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5 IN THE SUPERIOR COURT

6 STATE OF ARIZONA, COUNTY OF YAVAPAI

7 STATE OF ARIZONA,

8 Plaintiff,

9 vs.

10 JAMES ARTHUR RAY,

11 Defendant.

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V1300CR201080049

STATE'S REPLY TO DEFENDANT'S RESPONSE
TO STATE'S BENCH MEMORANDUM RE:
ADMISSIBILITY OF EVIDENCE RELATING
TO LESSER INCLUDED OFFENSE

(The Honorable Warren Darrow)

12
13 The State of Arizona, through undersigned counsel, hereby submits this Reply to
14 Defendant's Response to the State's Bench Memorandum regarding the admissibility of evidence
15 relating to the lesser included offense of negligent homicide during the State's case-in-chief. This
16 reply is supported by the following Memorandum of Points and Authorities.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18
19 **A. The State should not be barred from presenting evidence of negligent homicide,
20 an offense that is charged as a lesser-included under Rule 13.2(c), Ariz. R. Crim. P.**

21 Defendant's Response completely disregards the reality of the very clear language of
22 Rule 13.2(c), Ariz. R. Crim. P. Pursuant to the rule, Defendant was charged with negligent
23 homicide at the same time he was charged with manslaughter. The State should not be barred
24 from presenting evidence relevant to either charge. Further, the State agrees with Defendant's
25 statement that evidence relevant to reckless manslaughter is, by definition, also relevant to
26

1 negligent homicide. That was, in fact, one of the arguments presented in the State's
2 memorandum.

3 As noted in the State's Memorandum, in order to prove either negligent homicide or
4 manslaughter, the State must first prove that a substantial and unjustifiable risk of death was
5 created by Defendant's version of a sweat-lodge ceremony. The State must also prove that
6 Defendant's disregard of the risk was a gross deviation from the standard of conduct that a
7 reasonable person would observe in that situation. Finally, the State must establish one of two
8 mental states. To prove manslaughter the State must establish that Defendant was aware of the
9 risk and consciously disregarded it. To prove negligence that State must establish that Defendant
10 failed to perceive the risk existed. The State has never changed the theory of its case. The State
11 has always believed the prior sweat lodge events were relevant to show Defendant's was aware
12 and consciously disregarded a substantial and unjustifiable risk that his conduct would cause the
13 death of another. This information is relevant to the charge of manslaughter and the lesser
14 included charge of negligent homicide.
15

16 The State has further believed the history of Defendant's sweat lodge ceremonies was
17 relevant to rebut Defendant's claim that some type of toxin or poison caused the deaths in 2009.
18 The same structure used in Defendant's 2008 and 2009 sweat lodge ceremonies was also used in
19 other ceremonies. However, it was only in Defendant's ceremonies in 2008 and in 2009 that
20 anyone exhibited any signs of medical or physical distress. Moreover, throughout the history of
21 Angel Valley, sweat lodge ceremonies have been held in previously constructed structures with
22 no ill effects except for the ceremonies conducted by Defendant. This important fact is relevant
23 and material to rebut Defendant's claim that some unidentified toxin or poison cased the deaths
24 in 2009.
25
26

1 **B. Defendant's knowledge of the physical effects caused by the participants'**
2 **exposure to the heat in his sweat lodge is based on his observations of prior events.**

3 Prior to their entering Defendant's sweat lodge, Defendant told participants they would
4 experience the signs and symptoms of heat exhaustion and/or heat stroke. However, instead of
5 cautioning participants to be alert for these signs and symptoms as warning signs of heat
6 exhaustion and/or heat stroke, Defendant urged participants to ignore them and even worse to
7 strive for the "altered mental state" that signals the progression from heat exhaustion to heat
8 stroke.

9 This Court has now heard the testimony of many of the 2009 participants as to their
10 observations and physical condition after the sweat lodge. This testimony strikingly mirrors the
11 descriptions given by the participants of 2005 relating to Daniel Pfankuch and the observations
12 of the participants in 2007 and 2008 that people were vomiting, delirious and unconscious.
13 Defendant's claim that the State has not proven Defendant knew of these incidents is not only
14 contradicted by the testimony and offers of proof submitted at the 404(B) hearing; it is
15 contradicted by his own words as he describes what the participants will experience in 2009:

16 You will be in such an altered state, probably the most you know profound altered
17 state you've ever been in minus psycho actives. Seriously I mean you, you may
18 see visions, it's a it's a great opportunity for you to explore your own
19 consciousness. *We've had people who just don't even know where they are*
20 *anymore.* I mean if any of you saw Mike after he held the books last night he, he,
21 he wasn't there. It took him awhile to get back into his body and get grounded
22 and it's gonna be similar at the lodge. It's gonna take you awhile to get your
23 bearings back again and come into the third dimensions because you're gonna be
24 in an altered dimension literally and so what that means and and let me tell
25 you up front *because what starts to happen and has happened in years past is*
26 *that you forget where you are, you forget what you're a part of and you know*
 people start yelling crazy stuff in the lodge. Well that's disrespectful. It's
 disrespectful to the lodge and I've had I've had to warn on particular person in
 past years, hey if you don't quiet down I'm going to ask you to leave because
 you're disrupting the ceremony.

Transcript of Angel Valley Audio from MTO, 10-8 Thursday at 43-44 (emphasis added).

1 It is clear that Defendant knew that some participants in his sweat lodge ceremony would
2 experience an "altered state." This knowledge is based on what he observed in prior years. This
3 evidence goes to his degree of knowledge and is relevant to both negligent homicide and
4 manslaughter. As noted in the State's Memorandum, "[c]riminal intent, being a state of mind, is
5 shown by circumstantial evidence. Defendant's conduct and comments are evidence of his state
6 of mind." *State v. Routhier*, 137 Ariz. 90, 99, 669 P.2d 68, 77 (1983) (citing *State v. Vann*, 11
7 Ariz.App. 180, 463 P.2d 75 (1970)).

8
9 Defendant also misstates what he characterizes as the "State's theory of reckless
10 manslaughter." The State's theory is not that Defendant deliberately conditioned the victims to
11 remain in the sweat lodge until the point of death. However, the State has and will continue to
12 address Defendant's attempt to convince the jury that the victims and the participants in the
13 sweat lodge were clear-headed adults who were free to leave at any time, totally uninfluenced by
14 the words and actions of Defendant and the events of the previous four days of Spiritual Warrior
15 2009. As the testimony has shown, this is simply untrue. This is not the State's "theory" of
16 reckless manslaughter. However, it is another fact that is relevant to the knowledge of Defendant
17 and the mental states of the victims and participants.
18
19

20 **C. The State's "theory" of negligent homicide is not based on "corporate**
21 **omissions."**

22 Defendant also posits the State's "theory" of negligent homicide "apparently turns on
23 alleged prior incidents or corporate omissions." To borrow a phrase used in Defendant's
24 Response, Defendant's continued insistence that the State is attempting to blur the line between
25 corporate and criminal liability through the testimony of Steve Pace and other witnesses is a "red
26 herring." The State has not charged James Ray International with a crime.

1 The State has always maintained that Defendant was in charge of his sweat lodge
2 ceremony. The ceremony was completely under the control of Defendant. He was in charge of
3 the heat, the length of each round, and number of rounds held. It was Defendant who told the
4 participants they would suffer signs and symptoms of heat exhaustion and/or heat stroke. It was
5 Defendant who told them they should ignore these signs and symptoms, play full on and strive to
6 achieve an "altered state." It was Defendant who continued his sweat lodge ceremony after a
7 participant fell into the pit and burned his arm. It was Defendant who continued his sweat lodge
8 ceremony after a participant indicated he was having a heart attack. It was Defendant who
9 continued his sweat lodge ceremony while participants were dragged past him unconscious. It
10 was Defendant who told participants that Liz Neuman would be fine. Finally, it was Defendant
11 who told participants who told him that someone was not breathing that they would deal with it
12 after the final round.
13

14
15 Both manslaughter and criminal negligence require the State to establish what risks a
16 reasonable person in Defendant's circumstances, both as a leader of a sweat lodge ceremony and
17 as the leader of a five day adventure seminar, should have perceived. Pending before this Court
18 is Defendant's Motion in Limine to exclude the testimony of expert witness Steve Pace. The
19 State is not calling Mr. Pace to testify about what a corporation running a sweat lodge should
20 have perceived. The State is calling Mr. Pace to show what constitutes a reasonable standard of
21 care in an adventure program, whether it is an individual guiding hikers down the grand canyon
22 or an individual like Defendant sending seminar participants on a 36 hour fast and then into a 2-
23 hour long heat-endurance challenge. It is Defendant who has introduced the argument that Mr.
24 Pace's testimony is only relevant to establish corporate liability. This is not true. Mr. Pace's
25
26

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1 testimony will address precisely the situation that is being presented to the jury in this case and is
2 relevant to both the manslaughter charge and the lesser included charge of negligent homicide.

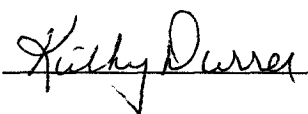
3 RESPECTFULLY submitted this 15th day of April, 2011.

4
5
6 By 
7 SHEILA SULLIVAN POLK
8 YAVAPAI COUNTY ATTORNEY

9 **COPIES** of the foregoing delivered
10 this 15th day of April, 2011:

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